

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2671**

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**Introduced by Committee on Jobs, Economic Development, and  
the Economy (Assembly Members V. Manuel Pérez (Chair),  
Beall, Block, and Hueso)**

March 5, 2012

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An act to amend and repeal Sections 14030, 14070, and 14076 of, and to repeal Section 14069.6 of, the Corporations Code, relating to small business financial development corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, as amended, Committee on Jobs, Economic Development, and the Economy. Small business financial development corporations: loans and loan guarantees.

(1) The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development. The law imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, which is created under that law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations. Existing law, until January 1, 2013, specifies that the amount of guarantee liability outstanding at any one time shall not exceed 5 times

the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the fund to another fund in state government, as specified. Existing law, beginning January 1, 2013, ~~would instead provide~~ *provides* that the amount of guarantee liability outstanding shall not exceed 4 times those amounts.

This bill would extend ~~indefinitely, until January 1, 2018~~, the provisions limiting the amount of guarantee liability outstanding from exceeding 5 times the amount of funds on deposit in the expansion fund, as specified, ~~and. The bill would also repeal the provisions that, beginning January 1, 2013, would limit~~ *provide that the provisions limiting the amount of guaranteed guarantee liability outstanding from exceeding 4 times the amount of those funds become operative on January 1, 2018.*

Existing law requires the former Trade and Commerce Agency to contract with an entity to conduct an independent statewide assessment of capital needs in California pertaining to the program established under the California Small Business Financial Development Corporation Law, and to establish minimum standards for the siting of small business financial development corporations, to be completed no later than June 30, 1998.

This bill would repeal that obsolete requirement imposed on the abolished agency.

(2) Existing law requires a corporate guarantee to be backed by funds on deposit in the corporation's trust fund account, or by receivables due from the corporation's trust fund account to another fund in state government, as specified. Existing law, until January 1, 2013, requires that loan guarantees be secured by a reserve of at least 20%, to be determined by the director. Existing law, beginning January 1, 2013, requires that loan guarantees be secured by a reserve of at least 25%, to be determined by the director.

This bill would ~~eliminate the provision making~~ *make* the minimum 20% reserve requirement effective only until January 1, 2013 ~~and would, thus, make those provisions effective indefinitely 2018~~. The bill would ~~repeal the provision that, beginning January 1, 2013, requires~~ *provide that the provisions requiring a minimum 25% reserve become operative on January 1, 2018*. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 14030 of the Corporations Code, as amended by Section 1 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

(b) *This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.*

~~SEC. 2.—Section 14030 of the Corporations Code, as added by Section 2 of Chapter 601 of the Statutes of 2007, is repealed.~~

SEC. 2. Section 14030 of the Corporations Code, as added by Section 2 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the

1 expansion fund plus any receivables due from funds loaned from  
2 the expansion fund to another fund in state government as directed  
3 by the Department of Finance pursuant to a statute enacted by the  
4 Legislature, including each of the trust fund accounts within the  
5 trust fund, unless the director has permitted a higher leverage ratio  
6 for an individual corporation pursuant to subdivision (b) of Section  
7 14037.

8 (b) This section shall become operative on January 1, ~~2013~~  
9 2018.

10 SEC. 3. Section 14069.6 of the Corporations Code is repealed.

11 SEC. 4. Section 14070 of the Corporations Code, as amended  
12 by Section 5 of Chapter 601 of the Statutes of 2007, is amended  
13 to read:

14 14070. (a) The corporate guarantee shall be backed by funds  
15 on deposit in the corporation's trust fund account, or by receivables  
16 due from funds loaned from the corporation's trust fund account  
17 to another fund in state government as directed by the Department  
18 of Finance pursuant to a statute enacted by the Legislature.

19 (b) Loan guarantees shall be secured by a reserve of at least 20  
20 percent to be determined by the director.

21 (c) The expansion fund and trust fund accounts shall be used  
22 exclusively to guarantee obligations and pay the administrative  
23 costs of the corporations. A corporation located in a rural area may  
24 utilize the funds for direct lending to farmers as long as at least 90  
25 percent of the corporate fund farm loans, calculated by dollar  
26 amount, and all expansion fund farm loans are guaranteed by the  
27 United States Department of Agriculture. The amount of funds  
28 available for direct farm lending shall be determined by the  
29 director. In its capacity as a direct lender, the corporation may sell  
30 in the secondary market the guaranteed portion of each loan so as  
31 to raise additional funds for direct lending. The agency shall issue  
32 regulations governing these direct loans, including the maximum  
33 amount of these loans.

34 (d) In furtherance of the purposes of this part, up to one-half of  
35 the trust funds may be used to guarantee loans utilized to establish  
36 a Business and Industrial Development Corporation (BIDCO)  
37 under Division 15 (commencing with Section 33000) of the  
38 Financial Code.

39 (e) To execute the direct loan programs established in this  
40 chapter, the director may loan trust funds to a corporation located

1 in a rural area for the express purpose of lending those funds to an  
2 identified borrower. The loan authorized by the director to the  
3 corporation shall be on terms similar to the loan between the  
4 corporation and the borrower. The amount of the loan may be in  
5 excess of the amount of a loan to any individual farm borrower,  
6 but actual disbursements pursuant to the agency loan agreement  
7 shall be required to be supported by a loan agreement between the  
8 farm borrower and the corporation in an amount at least equal to  
9 the requested disbursement. The loan between the agency and the  
10 corporation shall be evidenced by a credit agreement. In the event  
11 that any loan between the corporation and borrower is not  
12 guaranteed by a governmental agency, the portion of the credit  
13 agreement attributable to that loan shall be secured by assignment  
14 of any note, executed in favor of the corporation by the borrower  
15 to the agency. The terms and conditions of the credit agreement  
16 shall be similar to the loan agreement between the corporation and  
17 the borrower, which shall be collateralized by the note between  
18 the corporation and the borrower. In the absence of fraud on the  
19 part of the corporation, the liability of the corporation to repay the  
20 loan to the agency is limited to the repayment received by the  
21 corporation from the borrower except in a case where the United  
22 States Department of Agriculture requires exposure by the  
23 corporation in rule or regulation. The corporation may use trust  
24 funds for loan repayment to the agency if the corporation has  
25 exhausted a loan loss reserve created for this purpose. Interest and  
26 principal received by the agency from the corporation shall be  
27 deposited into the same account from which the funds were  
28 originally borrowed.

29 (f) Upon the approval of the director, a corporation shall be  
30 authorized to borrow trust funds from the agency for the purpose  
31 of relending those funds to small businesses. A corporation shall  
32 demonstrate to the director that it has the capacity to administer a  
33 direct loan program, and has procedures in place to limit the default  
34 rate for loans to startup businesses. Not more than 25 percent of  
35 any trust fund account shall be used for the direct lending  
36 established pursuant to this subdivision. A loan to a corporation  
37 shall not exceed the amount of funds likely to be lent to small  
38 businesses within three months following the loan to the  
39 corporation. The maximum loan amount to a small business is fifty  
40 thousand dollars (\$50,000). In the absence of fraud on the part of

1 the corporation, the repayment obligation pursuant to the loan to  
2 the corporation shall be limited to the amount of funds received  
3 by the corporation for the loan to the small business and any other  
4 funds received from the agency that are not disbursed. The  
5 corporation shall be authorized to charge a fee to the small business  
6 borrower, in an amount determined by the director pursuant to  
7 regulation. The program provided for in this subdivision shall be  
8 available in all geographic areas of the state.

9 *(g) This section shall remain in effect only until January 1, 2018,*  
10 *and as of that date is repealed, unless a later enacted statute, that*  
11 *is enacted before January 1, 2018, deletes or extends that date.*

12 ~~SEC. 5. Section 14070 of the Corporations Code, as added by~~  
13 ~~Section 6 of Chapter 601 of the Statutes of 2007, is repealed.~~

14 *SEC. 5. Section 14070 of the Corporations Code, as added by*  
15 *Section 6 of Chapter 601 of the Statutes of 2007, is amended to*  
16 *read:*

17 14070. (a) The corporate guarantee shall be backed by funds  
18 on deposit in the corporation's trust fund account, or by receivables  
19 due from funds loaned from the corporation's trust fund account  
20 to another fund in state government as directed by the Department  
21 of Finance pursuant to a statute enacted by the Legislature.

22 (b) Loan guarantees shall be secured by a reserve of at least 25  
23 percent to be determined by the director, unless the director  
24 authorizes a higher leverage ratio for an individual corporation  
25 pursuant to subdivision (b) of Section 14037.

26 (c) The expansion fund and trust fund accounts shall be used  
27 exclusively to guarantee obligations and pay the administrative  
28 costs of the corporations. A corporation located in a rural area may  
29 utilize the funds for direct lending to farmers as long as at least 90  
30 percent of the corporate fund farm loans, calculated by dollar  
31 amount, and all expansion fund farm loans are guaranteed by the  
32 United States Department of Agriculture. The amount of funds  
33 available for direct farm lending shall be determined by the  
34 director. In its capacity as a direct lender, the corporation may sell  
35 in the secondary market the guaranteed portion of each loan so as  
36 to raise additional funds for direct lending. The agency shall issue  
37 regulations governing these direct loans, including the maximum  
38 amount of these loans.

39 (d) In furtherance of the purposes of this part, up to one-half of  
40 the trust funds may be used to guarantee loans utilized to establish

1 a Business and Industrial Development Corporation (BIDCO)  
2 under Division 15 (commencing with Section 33000) of the  
3 Financial Code.

4 (e) To execute the direct loan programs established in this  
5 chapter, the director may loan trust funds to a corporation located  
6 in a rural area for the express purpose of lending those funds to an  
7 identified borrower. The loan authorized by the director to the  
8 corporation shall be on terms similar to the loan between the  
9 corporation and the borrower. The amount of the loan may be in  
10 excess of the amount of a loan to any individual farm borrower,  
11 but actual disbursements pursuant to the agency loan agreement  
12 shall be required to be supported by a loan agreement between the  
13 farm borrower and the corporation in an amount at least equal to  
14 the requested disbursement. The loan between the agency and the  
15 corporation shall be evidenced by a credit agreement. In the event  
16 that any loan between the corporation and borrower is not  
17 guaranteed by a governmental agency, the portion of the credit  
18 agreement attributable to that loan shall be secured by assignment  
19 of any note, executed in favor of the corporation by the borrower  
20 to the agency. The terms and conditions of the credit agreement  
21 shall be similar to the loan agreement between the corporation and  
22 the borrower, which shall be collateralized by the note between  
23 the corporation and the borrower. In the absence of fraud on the  
24 part of the corporation, the liability of the corporation to repay the  
25 loan to the agency is limited to the repayment received by the  
26 corporation from the borrower except in a case where the United  
27 States Department of Agriculture requires exposure by the  
28 corporation in rule or regulation. The corporation may use trust  
29 funds for loan repayment to the agency if the corporation has  
30 exhausted a loan loss reserve created for this purpose. Interest and  
31 principal received by the agency from the corporation shall be  
32 deposited into the same account from which the funds were  
33 originally borrowed.

34 (f) Upon the approval of the director, a corporation shall be  
35 authorized to borrow trust funds from the agency for the purpose  
36 of relending those funds to small businesses. A corporation shall  
37 demonstrate to the director that it has the capacity to administer a  
38 direct loan program, and has procedures in place to limit the default  
39 rate for loans to startup businesses. Not more than 25 percent of  
40 any trust fund account shall be used for the direct lending

1 established pursuant to this subdivision. A loan to a corporation  
2 shall not exceed the amount of funds likely to be lent to small  
3 businesses within three months following the loan to the  
4 corporation. The maximum loan amount to a small business is fifty  
5 thousand dollars (\$50,000). In the absence of fraud on the part of  
6 the corporation, the repayment obligation pursuant to the loan to  
7 the corporation shall be limited to the amount of funds received  
8 by the corporation for the loan to the small business and any other  
9 funds received from the agency that are not disbursed. The  
10 corporation shall be authorized to charge a fee to the small business  
11 borrower, in an amount determined by the director pursuant to  
12 regulation. The program provided for in this subdivision shall be  
13 available in all geographic areas of the state.

14 (g) This section shall become operative on January 1, ~~2013~~  
15 2018.

16 SEC. 6. Section 14076 of the Corporations Code, as amended  
17 by Section 7 of Chapter 601 of the Statutes of 2007, is amended  
18 to read:

19 14076. (a) It is the intent of the Legislature that the  
20 corporations make maximal use of their statutory authority to  
21 guarantee loans and surety bonds, including the authority to secure  
22 loans with a minimum loan loss reserve of only 20 percent, so that  
23 the financing needs of small business may be met as fully as  
24 possible within the limits of corporations' loan loss reserves. The  
25 agency shall report annually to the Legislature on the financial  
26 status of the corporations and their portfolio of loans and surety  
27 bonds guaranteed.

28 (b) Any corporation that serves an area declared to be in a state  
29 of emergency by the Governor or a disaster area by the President  
30 of the United States, the Administrator of the United States Small  
31 Business Administration, or the United States Secretary of  
32 Agriculture shall increase the portfolio of loan guarantees where  
33 the dollar amount of the loan is less than one hundred thousand  
34 dollars (\$100,000), so that at least 15 percent of the dollar value  
35 of loans guaranteed by the corporation is for those loans. The  
36 corporation shall comply with this requirement within one year of  
37 the date the emergency or disaster is declared. Upon application  
38 of a corporation, the director may waive or modify the rule for the  
39 corporation if the corporation demonstrates that it made a good  
40 faith effort to comply and failed to locate lending institutions in



1 the region that the corporation serves that are willing to make  
2 guaranteed loans in that amount.

3 (c) *This section shall remain in effect only until January 1, 2018,*  
4 *and as of that date is repealed, unless a later enacted statute, that*  
5 *is enacted before January 1, 2018, deletes or extends that date.*

6 ~~SEC. 7. Section 14076 of the Corporations Code, as added by~~  
7 ~~Section 8 of Chapter 601 of the Statutes of 2007, is repealed.~~

8 SEC. 7. *Section 14076 of the Corporations Code, as added by*  
9 *Section 8 of Chapter 601 of the Statutes of 2007, is amended to*  
10 *read:*

11 14076. (a) It is the intent of the Legislature that the  
12 corporations make maximal use of their statutory authority to  
13 guarantee loans and surety bonds, including the authority to secure  
14 loans with a minimum loan loss reserve of only 25 percent, unless  
15 the agency authorizes a higher leverage ratio for an individual  
16 corporation pursuant to subdivision (b) of Section 14037, so that  
17 the financing needs of small business may be met as fully as  
18 possible within the limits of corporations' loan loss reserves. The  
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20 status of the corporations and their portfolio of loans and surety  
21 bonds guaranteed.

22 (b) Any corporation that serves an area declared to be in a state  
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28 dollars (\$100,000), so that at least 15 percent of the dollar value  
29 of loans guaranteed by the corporation is for those loans. The  
30 corporation shall comply with this requirement within one year of  
31 the date the emergency or disaster is declared. Upon application  
32 of a corporation, the director may waive or modify the rule for the  
33 corporation if the corporation demonstrates that it made a good  
34 faith effort to comply and failed to locate lending institutions in  
35 the region that the corporation serves that are willing to make  
36 guaranteed loans in that amount.

37 (c) *This section shall become operative on January 1, 2013*  
38 *2018.*

O